terms, the statutory exemption does not apply to the resale obligation imposed by Sec. 251(b)(1). As to the (b)(1) obligation, the Sec. 251(f)(2) suspension *or modification* of the obligation may be available if the rural carrier petitions the state commission and demonstrates the appropriateness of the modification to the commission. Given the Act's deference to the smallest telephone companies, the restrictions on resale (*i.e.*, modifications to the Sec. 251(b)(1) obligation) proposed by JSI may be appropriate for small rural carriers, at least for the near term. But these restrictions can only be adopted by individual states.

JSI also presents a superficially interesting argument that an RTC should not be responsible for terminating access charges on calls originated from a flat-rated wholesale resold line. JSI at 6-7. On further examination, however, the argument proves to be very weak. In the first place, it is not clear whether JSI is referring to toll or local terminating access charges. *See* JSI at 8. However, JSI's own chart shows how sensitive to JSI's assumptions this "problem" is. At a $0.01 terminating access charge and a $5.00 flat rate, the crossover point is 500 minutes and overall losses begin at 1,000 minutes of use (MOU). The actual national average residential retail flat rate is around $18.00, however.[7] Even at a 35% wholesale discount, then, the reseller would be paying $11.70. At a $0.01 access charge, the crossover point is approximately 1,100 MOU and the overall loss point is thus 2,200 MOU. If the local terminating access charge is lowered to a more realistic

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[7] CC Docket 96-45, Reply Comments of the Office of the Ohio Consumers' Counsel (May 7, 1996) at 10.

level, and the wholesale discount is also made more realistic, RTC resale of virtually all residential consumers' lines would be profitable. The RTC would also realistically gain additional revenue from the resale of vertical services, enhancing the resale profitability.

Another flaw in JSI's assumption is that there are access charges for all MOU, which is untrue under either a pure bill and keep regime or a modified bill and keep regime such as proposed by OCC. OCC Initial Comments at 44-47.

The biggest flaw in JSI's argument, however, is that it is made in the wrong forum. Nothing in the Act gives this Commission the power to mandate the resale restrictions JSI proposes for RTCs. The Act gives all such responsibility to the states. Sec. 251(f)(1) and (2).

OCC agrees with Ameritech (at 54) that grandfathered and sunsetted services and services requiring build out of additional facilities may be restricted from resale. *See also* CBT at 34.

TW supports excluding promotional rates from resale. TW at 73. We also note that Ameritech's definition (at 57) of a temporary promotion (no more than 120 days per year) is probably too long. And Ameritech's attempted distinction (at 58) between "pricing plans" and "retail rates" has no basis in the statute.

c. Pricing of Wholesale Services (Paragraphs 178-188)

(1) Statutory Language (Paragraph 178)

(2) Discussion (Paragraphs 179-183)

TW points out (at 76) the variation in the states' current resale pricing regimes, and argues that this is grounds for an FCC-preemptive "nationally uniform approach." TW neglects to recognize that many of the state standards were adopted prior to the effective date of the 1996 Act; those states did not have the benefit of the Act's standard and methodology.

Ameritech opines (at 79-80) that "a wholesale price is properly calculated by comparing the costs of the incumbent LEC operating as a retail enterprise with the costs of such incumbent LEC operating as a wholesale enterprise." *See also* CBT at 36. Unfortunately for these LECs, that is not how the statute requires the wholesale price determination to be made. Sec. 252(d)(3) sets wholesale rates as retail rates less avoided costs, not retail rates plus "wholesaling" costs plus joint and common costs (Ameritech at 80) less avoided costs. In fact, CBT argues that wholesale costs should not include overhead. CBT at 35. *See also* TW at 71.

JSI raises an important point for RTCs JSI at 10. JSI also proposes that additional wholesaling costs should offset the avoided costs of a wholesale offering. However, the crux of the argument really is the question whether an RTC, with its limited plant and workforce, will actually avoid any costs for an individual service being resold.

AT&T would add a Commission rule that "a discount that does not permit viable competition should be presumed ... not to comply with Sections 251(c)(4) and 252(d)(3)." AT&T at 85. This would be totally inappropriate: Congress has set up the Sec. 252(d)(3) rate standard *regardless* of whether it allows a particular competitor (with its own cost structure) to compete effectively. Equally, we disagree with AT&T (*id.*) that the Act allows states to increase the wholesale discount for ILECs. Sec. 251(d)(3) could not be more specific.

(3) Relationship to Other Pricing Standards (Paragraphs 184-188)

Ameritech (at 27) states that "[c]onstruing section 251(c)(3) [and Sec. 251(c)(4)] to permit a classic arbitrage opportunity would be inefficient and would discourage the development of facilities-based competition." As pointed out in OCC's initial comments (at 38-39), Congress has allowed such arbitrage; construing the statute in the fashion suggested by Ameritech would write either (c)(3) or (c)(4) out of the law. Further, Ameritech's statement (at 29-30) that "Section 251(c)(3) ... simply does not permit requesting carriers to piece together network elements, all purchased from the incumbent LEC, in order to offer a service equivalent to one that the incumbent LEC already offers at retail..." (*see also* CBT at 16) simply ignores the specific language of Sec. 251(c)(3) that an ILEC "shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." *See* AT&T at 26-27.

II.B.4 Duty to Provide Public Notice of Technical Changes (Paragraphs 189-194)

II.C. Obligations Imposed on "Local Exchange Carriers" by Section 251(b) (Paragraphs 195-263)

II.C.1. Resale (Paragraphs 196-197)

IllCC argues (at 71) that the imposition on NECs of a requirement to allow resale of residential service only to residential consumers is a reasonable, nondiscriminatory condition. OCC agrees.

II.C.2 Number Portability (Paragraphs 198-201)

II.C.3. Dialing Parity *and* II.C.4. Access to Rights of Way (Paragraphs 202-225)

II.C.5. Reciprocal Compensation for Transport and Termination of Traffic (Paragraphs 226-244)

a. Statutory Language (Paragraph 226)

b. State Activity (Paragraphs 227-229)

c. Definition of Transport and Termination of Telecommunications (Paragraphs 230-231)

d. Rate Levels (Paragraphs 232-234)

IllCC argues (at 86) that Sec. 252(d)(2)(B)(ii) does not prohibit rate regulation proceedings. Instead, the section just does not *independently* authorize such proceedings. OCC agrees.

OCC had proposed LRSIC as a price floor, to ensure that all services make a contribution to joint and common costs. PUCO (at 72) recommends a LRSIC + 10% price floor for reciprocal compensation. In many instances, this would be acceptable; however, there should be a provision for waivers to allow less than a 10% contribution.

e. Symmetry (Paragraphs 235-238)

We agree with PUCO (at 75) that it should be up to the states to determine whether to adopt rate symmetry. AT&T's proposal (at 69) that the Commission should establish rules requiring symmetrical reciprocal compensation is beyond the Commission's authority to prescribe. Sec. 252(c)(2).

f. Bill and Keep Arrangements (Paragraphs 239-243)

Despite OCC's support for a modified bill and keep approach (*see* OCC's Initial Comments at 44-47), OCC agrees with IllCC (at 88) that Sec. 252(d)(2)(B)(i) does not allow the Commission to impose bill and keep This is true despite the many benefits of bill and keep. TW at 96-102. TW's arguments (at 93-95) that the Commission has the power to adopt a national bill and keep standard are circular Yet the many benefits of a bill and keep regime suggest that at the very least this Commission should do nothing to preclude or to discourage the states from using bill and keep

Clearly, OCC also agrees with PUCO (at 77) that states may impose bill and keep. However, one possible interpretation of PUCO's statement with regard to interconnection between neighboring ILECs that "states retain the option to grandfather such arrangements and make them available to new entrants only if the new entrant is similarly situated...." is that that is the states' *only* option. Under Sec. 252(d)(2)(B)(i), states should retain that option, but states should also retain the option to make such historical interconnection arrangements available to *competing* new entrants.

g. Other Possible Standards (Paragraph 244)

OCC also disagrees with a possible interpretation of PUCO's statement (at 79) "that states have latitude to establish [bill and keep] arrangements for one year from a state-specific date certain" that would limit the states' authority to that one option. Clearly, the Act gives states that latitude; the Act also gives states the latitude to adopt *permanent* bill and keep arrangements. Sec. 252(d)(2)(b)(i).

II.D. Duties Imposed on "Telecommunications Carriers" by Section 251(a) (Paragraphs 245-249)

We agree with IllCC (at 90-92) that among the obligations imposed on all telecommunications carriers is an obligation to ease access of persons with disabilities to the network.

II.E. Number Administration (Paragraphs 250-259)

II.F. Exemptions, Suspensions, and Modifications (Paragraphs 260-261)

CBT acknowledges that "the Act places the authority for granting exemptions, suspensions, or modifications [for rural exchange companies and rural carriers] with state commissions...." CBT at 4. Yet CBT asks the Commission "to address the special concerns of smaller companies and the markets they serve. ..." *Id.* at i. OCC submits that the exemption, suspension and modification provisions of Sec. 251(f) are the *only* directives from Congress to consider the special circumstances of smaller companies, with which state commissions are intimately familiar And Congress has not directed the Commission to consider those circumstances

OCC agrees with AT&T (at 91) that "the 2% threshold for filing a petition under Section 251(f)(2) [should] be applied at the holding company level, not to individual operating companies." This is clearly what is contemplated by the statute's definition of rural carrier as one with "fewer than 2 percent of the Nation's subscriber lines installed *in the aggregate nationwide* . . ." (Emphasis added.) OCC is not aware of any "individual operating company" that operates on a nationwide scale. We also agree with AT&T (at 91-92) that the burden is on a carrier to prove that it meets the criteria for suspension and modification set forth in Sec. 251(f)(2)(A) and (B), and that "any suspension or modification granted ... must be narrowly tailored to address the particular harm that the state may find."

II.G. Continued Enforcement of Exchange Access and Interconnection Regulations (Paragraph 262)

II.H. Advanced Telecommunications Capabilities (Paragraph 263)

III. PROVISIONS OF SECTION 252

III.A. Arbitration Process (Paragraphs 264-268)

Two valuable suggestions are made in this area: IllCC (at 98) says that notice of failure to act should be made as a sworn petition. PUCO (at 81) also submits that the notice should be served upon other parties to the negotiation or arbitration.

TW notes the difficulties of "final offer" arbitration, where it is possible that neither final offer would serve the public interest. TW at 111. OCC submits that the proposal made in OCC's Initial Comments (at 50) that, rather than classic "final offer" arbitration, the reviewing regulatory agency use a public interest "screen" in its deliberations, will satisfy TW's concern.

III.B. Section 252(i) (Paragraphs 269-272)

TW's absolute denial that interconnection agreements are only available to "similarly situated" carriers ignores the statutory requirement that agreements be available "under the same terms and conditions...." Sec. 252(i). However, OCC agrees that the burden should be on those denying applicability of the agreement to demonstrate inapplicability.

CONCLUSION

The issues dealt with in this rulemaking are among the most crucial for the effective development of local exchange competition. OCC urges the Commission to provide guidance to the state commissions that will oversee the local side of this national initiative without dictating in such detail that state flexibility to experiment will be lost. Such a middle ground will not necessarily be in the interest of any particular stakeholder in the battle for the local exchange market, but it will be in the public interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the Initial Comments of the Office of the Ohio Consumers' Counsel have been served by overnight mail to the International Transcription Service, and in diskette form to Janice Myles on this 29th day of May, 1996.

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